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Filing date: **12/02/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92049710
Party	Defendant healthcommunities.com, Inc.
Correspondence Address	Deborah A. Basile Doherty, Wallace, Pillsbury & Murphy, P.C. One Monarch Place, 1414 Main Street Suite 1900 Springfield, MA 01144-1900 UNITED STATES dbasile@dwpm.com, mpfeiffer@dwpm.com
Submission	Motion to Amend/Amended Answer or Counterclaim
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Date	12/02/2008
Attachments	AmendedAnswer.pdf (9 pages)(176961 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL APPEAL BOARD

MD VIDEO, INC.)	
)	
Petitioner,)	CANCELLATION NO. 92049710
)	
v.)	
)	
HEALTHCOMMUNITIES.COM, INC.)	
)	
Respondent.)	

RESPONDENT HEALTHCOMMUNITIES.COM, INC.'S MOTION TO AMEND ITS
ANSWER TO PETITIONER MD VIDEO, INC.'S PETITION FOR CANCELLATION

Now comes Respondent HealthCommunities.com, Inc (“Respondent”) and moves the TTAB pursuant to Rule 2.115 of the Trademark Rules of Practice and to Fed. R. Civ. P. 15(a), to amend Respondent’s original Answer and to file the accompanying Amended Complaint. Respondent seeks to amend its originally filed Answer (“Original Answer”) to place the Original Answer in conformity with § 2.114(b) of the Trademark Rules of Practice, and to assert affirmative defenses in support of Respondent’s registration of the mark “MD VIDEO”. Respondent further desires to withdraw its “Brief in Support of its Motion to Dismiss,” which was filed in combination with its Original Answer.

Respondent respectfully requests that the TTAB allow Respondent’s present motion to amend as, pursuant to Fed. R. Civ. P. 15(a), Respondent has acquired Petitioner MD Video, Inc.’s permission to amend Respondent’s Answer.

WHEREFORE, Respondent respectfully requests that this Motion be allowed and for such other and further relief as the TTAB deems just and proper.

Respectfully submitted,

Healthcommunities.com, Inc.

Dated: December 2, 2008

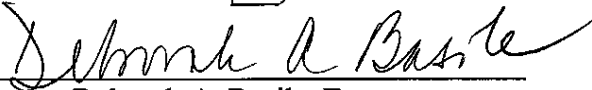
By: Deborah A. Basile

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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this correspondence is being electronically filed with the Electronic System for Trademark Trials and Appeals

December 2, 2008


Deborah A. Basile, Esq.

Date of Signature: December 2, 2008

CERTIFICATE OF SERVICE

I, Deborah A. Basile, hereby certify that I have sent a copy of the foregoing Petition to the TTAB by first class mail, postage prepaid, to the following:

Paul Kobak, Esq.
Kluger Peretz Kaplan & Berliln
201 S. Biscayne Blvd., Suite 1700
Miami, FL 33131

Attorney for Petitioner

Dated: December 2, 2008


Deborah A. Basile

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HEALTHCOMMUNITIES.COM, INC.)	
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RESPONDENT HEALTHCOMMUNITIES.COM, INC.'S AMENDED ANSWER TO
PETITIONER MD VIDEO, INC.'S PETITION FOR CANCELLATION

NOW COMES HEALTHCOMMUNITIES.COM, INC ("Respondent"), the owner of U.S. Registration No. 2,599,776 for the mark MD VIDEO, filed on March 19, 2001, alleging a first use date of February 25, 2002, and registered on the Supplemental Register on July 23, 2002 for "medial information, namely providing information on a variety of medical topics using prerecorded video programs accessible by computer on the Internet" in International Class 042 (the "Services"), and in accordance with Rules 2.114 though 2.116 of the Trademark Rules of Practice and by and through its undersigned counsel, files this Amended Answer in response to the Petition for Cancellation filed by Petitioner MD Video, Inc. ("Petitioner") on July 25, 2008, and in support thereof respectfully states as follows:

AMENDED ANSWER TO PETITION FOR CANCELLATION

Respondent responds to the Petition for Cancellation (the "Petition") filed by Petitioner as follows:

In response to the first unnumbered paragraph of the Petition directly underneath the heading “PETITION FOR CANCELLATION”, Respondent denies that Petitioner is or will be damaged by the continued registration of Respondents mark MD VIDEO (the “Registered Mark”); and states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of the first, unnumbered paragraph.

Respondent responds to the separately-numbered paragraphs of the Petition as follows:

1. In response to the allegations of paragraph 1 of the Petition, Respondent denies the allegations of paragraph 1 of the Petition, and admits only the factual assertion that Respondent filed its Declaration of Use of Mark in Commerce Under Section 8 (“Declaration”) on July 1, 2008.

2. In response to the allegations of paragraph 2 of the Petition, Respondent admits all of the allegations of paragraph 2 of the Petition.

3. In response to the allegations of paragraph 3 of the Petition, Respondent admits all of the allegations of paragraph 3 of the Petition with the exception of the use of the phrase “purported specimen”, wherein Respondent denies that the specimen filed with the USPTO on July 1, 2008 was “a purported specimen” to the extent that the term may be used to convey a meaning that Respondent filed a false or fraudulent specimen.

4. In response to the allegations of paragraph 4 of the Petition, Respondent denies that a review of the website www.myhealthsite.com reveals that the Registered Mark is not used in relation to providing any prerecorded medical video programs; Respondent admits that the website contains a separate and distinct mark PATIENT

VIDEO, which links to a different website, www.patientvideo.com; Respondent denies the remaining allegations set forth in paragraph 4 of the Petition; Respondent further avers that the allegations set forth in paragraph 4 of the Petition pertaining to Respondent's use of the PATIENT VIDEO mark are irrelevant to the present cancellation proceeding.

5. In response to the allegations of paragraph 5 of the Petition, Respondent is without knowledge or information sufficient to form a belief as to the truth of the first allegation set forth in paragraph 5 of the Petition; Respondent admits the remainder of the allegations set forth in paragraph 5 of the Petition, but denies the allegation contained in footnote number 3 of paragraph 5 of the Petition.

6. To the extent that the allegations contained in paragraph 6 of the Petition state a legal conclusion, no response is required; in response to all of the remaining allegations of paragraph 6 of the Petition, Respondent denies all of the remaining allegations of paragraph 6 of the Petition.

7. To the extent that the allegations contained in paragraph 7 of the Petition state a legal conclusion, no response is required; in response to all of the remaining allegations of paragraph 7 of the Petition, Respondent denies all of the remaining allegations of paragraph 7 of the Petition.

8. To the extent that the allegations contained in paragraph 8 of the Petition state a legal conclusion, no response is required; to the extent that the allegations contained in paragraph 8 of the Petition require a response, Respondent denies all such allegations contained in paragraph 8 of the Petition.

9. In response to the allegations of paragraph 9 of the Petition, Respondent admits all of the allegations of paragraph 9 of the Petition.

10. To the extent that the allegations contained in paragraph 10 of the Petition state a legal conclusion, no response is required; in response to all of the remaining allegations of paragraph 10, Respondent denies the allegations of paragraph 10 of the Petition. Respondent further avers that the Specimen of Use that it filed with the USPTO on July 1, 2008 (“Specimen”) in support of its Declaration was found to be adequate by the USPTO, and that such specimen was taken directly from Respondent’s website page at www.myhealthsite.com.

11. To the extent that the allegations contained in paragraph 11 of the Petition state a legal conclusion, no response is required; in response to all of the remaining allegations of paragraph 11, Respondent denies the allegations of paragraph 11 of the Petition.

12. To the extent that the allegations contained in paragraph 12 of the Petition state a legal conclusion, no response is required; to the extent that the allegations contained in paragraph 12 of the Petition require a response, Respondent denies all such allegations contained in paragraph 12 of the Petition.

13. To the extent that the allegations contained in paragraph 13 of the Petition set forth the legal principle by which Respondent is entitled under the law to benefit from the Registered Mark, no response is required; to all other allegations contained in paragraph 13 of the Petition, Respondent denies such allegations of paragraph 13 of the Petition.

WHEREFORE, Respondent respectfully prays that the cancellation of the Registered Mark be denied and that judgment be entered for Respondent.

AFFIRMATIVE DEFENSES


1. As a complete affirmative defense, Respondent states that Petitioner has failed to state a claim upon which relief may be granted.

2. As a complete affirmative defense, Respondent has used and continues to use the Registered Mark in association with its Services, and has not abandoned the Registered Mark since the claimed dates of first use of the Registered Mark.

3. As a complete affirmative defense, Respondent asserts that it filed a proper Declaration and a proper Specimen supporting such Declaration, and that such Specimen evidenced but one example of Respondent's use of the Registered Mark in commerce, and further that, after examination by the USPTO, such Declaration and Specimen were deemed appropriate and acceptable by the USPTO.

Respectfully submitted,

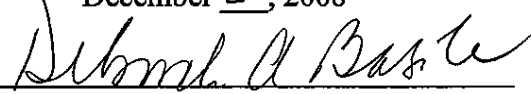
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